

UNIVERSITY OF SWAZILAND

FACULTY OF HEALTH SCIENCES

MAIN EXAMINATION PAPER, MAY 2017

TITLE OF PAPER : ASPECTS OF LAW FOR HEALTH PRACTICE

COURSE CODE : LH305

TIME ALLOWED : 3 HOURS

INSTRUCTIONS

(1) ANSWER QUESTION 1 WHICH IS
COMPULSORY AND ANY OTHER THREE
(3) QUESTIONS OF YOUR CHOICE

(2) MARKS FOR QUESTIONS OR PARTS
OF A QUESTION ARE INDICATED IN
BRACKETS

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GRANTED BY THE INVILATOR

QUESTION 1

Mr. Samuels last will and testament contains the following clause:

“My daughter Angel inherits E100 000 and her children who are alive at the time of my death, each inherits E50 000.00”.

Mr. Marios died on the 24th of March 2015. Angel’s third child Naude was born on the 18th of January 2016. Angel has two other children, Meryl and Sheila.

(a) Who will inherit from Mr. Marios?

Explain your answer with reference to authority.

[20 marks]

(b) Below follows is a list of clauses from a testator’s will. In each instance C was already conceived at the time of the testator’s death, but only born alive after the testator’s death. Indicate and briefly explain in which one of the following examples C would not be able to inherit:

(i) “I bequeath my estate to my children.” At the time of his death, the testator had two children, A and B, and his wife was expecting a third child, C.

(ii) “I bequeath my estate to my children A and B, and any other child (ren) that my wife expects at the time of my death.” At the time of his death, the testator had two children, A and B and his wife was expecting a third child, C.

- (iii) "I bequeath my estate to my children who are alive at the time of my death." At the time of his death, the testator had two children, A and B, and his wife was expecting a third child, C.
- (iv) "I bequeath my estate to my children A and B". At the time of his death, the testator had two children, A and B, and his wife was expecting a third child, C. [5 marks]

Total: [25 Marks]

QUESTION 2

In the case of *Schloendorff v Society of New York Hospital* 211 NY 125 (1914), Justice Cardozo made the following statement with regards to every patient's right to consent to treatment.

"Every human being of adult years and sound mind has the right to determine what shall be done with his body and a surgeon who performs an operation without his patient's consent commits an assault for which he is liable in damages."

- (a) Discuss the requirements for consent to treatment. [16 marks]
- (b) Discuss briefly the three (3) exceptions to consent to treatment. [9 marks]

Total:[25 marks]

QUESTION 3

Mrs. Lushaba has been married to Professor Lushaba without an ante-nuptial contract for the past (4) years. Mrs. Lushaba has no children from the marriage yet. She occasionally suffers from a swollen uterus, for which she has been constantly seeing a doctor for treatment. Her doctor has now advised her to undergo an operation wherein her uterus will be removed and replaced with an artificial one. Mrs. Lushaba has freely and voluntarily given the doctor her consent to proceed with the operation and it is due in a week's time. All along Professor Lushaba has been kept completely blank about all these developments and somehow he has learnt about what has been going on behind the scenes. He wants to stop the operation and when he confronts the doctor about his intentions, the doctor tells him frankly that with his patient's consent no one can intervene.

- (a) Can Professor Lushaba stop this operation on his wife from going ahead?
If so, on what grounds? [15 marks]
- (b) Does Professor Lushaba have any legal basis to compel the doctor to disclose the diagnosis of his wife to him? [10 marks]

Total: [25 marks]

QUESTION 4

- (a) What is meant by vicarious liability? [5marks]
- (b) In the context of the medical profession, what are the two (2) requirements that must exist for a vicarious liability claim to succeed? [10 marks]